

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

KEVIN HICKS

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD79120

DATE: March 28, 2017

Appeal From:

Jackson County Circuit Court
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, Victor C. Howard, Judge and Gary D. Witt, Judge

Attorneys:

Gwenda R. Robinson, St. Louis, MO, for appellant.

Shawn Mackelprang, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

KEVIN HICKS,

APPELLANT,

v.

STATE OF MISSOURI,

RESPONDENT.

No. WD79120

Jackson County

Before Division Three: Karen King Mitchell, Presiding Judge, Victor C. Howard, Judge and Gary D. Witt, Judge

Kevin Hicks ("Hicks") appeals the denial after an evidentiary hearing of his Rule 29.15 amended motion for post-conviction relief by the Circuit Court of Jackson County. Hicks was convicted after a jury trial of one count of first-degree robbery, five counts of forcible sodomy, one count of forcible rape, and one count of attempted forcible rape. In his Rule 29.15 motion, as relevant to this appeal, Hicks claimed his trial counsel was ineffective for inducing him to waive his right to testify at a suppression hearing and by failing to advise him that his suppression hearing testimony would be inadmissible at trial. On appeal, Hicks argues the motion court erred in failing to find that the above allegations constituted ineffective assistance of counsel (Point Two). Hicks also claims that the motion court erred in denying his Rule 29.15 motion without making an independent inquiry into and a factual finding regarding the existence of abandonment by post-conviction counsel for the untimely filing of Hicks's amended post-conviction motion (Point One).

WE REVERSE AND REMAND TO THE MOTION COURT.

DIVISION THREE HOLDS:

The motion erred in failing to make an inquiry into and a factual finding regarding abandonment by post-conviction counsel where his amended post-conviction motion was untimely filed. Because the motion court did not consider claims raised in Hicks's *pro se* post-conviction motion, the case must be remanded for the motion court to make a finding regarding abandonment.

Opinion by Gary D. Witt, Judge

March 28, 2017

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